

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

TOBIAS A. PRUDENCIO, #41881-007	§	
VS.	§	CIVIL ACTION NO. 2:19cv87
		CRIM NO. 2:17cr3
UNITED STATES OF AMERICA	§	

ORDER OF DISMISSAL

Movant Tobias A. Prudencio, a prisoner confined at FCI Gilmer proceeding *pro se*, filed this motion to vacate, set aside, or correct his federal sentence. The motion was referred to United States Magistrate Judge Roy S. Payne for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

On January 18, 2022, Judge Payne issued a Report, (Dkt. #5), recommending that Movant's section 2255 proceeding be dismissed, without prejudice, for Movant's failure to comply with an order of the Court and to prosecute his own case. A copy of this Report was sent to Movant at his last-known address. To date, however, no objections to the Report have been filed and Movant has not communicated with the Court since 2019.

Because objections to Judge Payne's Report have not been filed, Movant is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See*


United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (holding that where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. #5), is **ADOPTED** as the opinion of the Court. Further, it is

ORDERED that Movant's section 2255 proceeding is **DISMISSED**, without prejudice, for Movant's failure to comply with an order of the Court and his failure to prosecute his own case. Movant is further **DENIED** a certificate of appealability *sua sponte*, which refers only to this case and does not prevent refiling. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 1st day of March, 2022.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE